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## The Libel Case

THE OUTCOME of Gen. Westmoreland's suit against CBS confirms us in the view that the case never should have been brought. The result was hailed as vindication of sorts by both sides, but it does not seem to us to have been anything nearly like that. The case was, rather, a libel extravaganza, a battle of mammoths—powerful but cumbersome—which showed more than anything else the limitations of the legal system to resolve great clashes of fact and personal and institutional pride. In the end the costs, on both sides, may have been greater than anything either purports to have gained.

Gen. Westmoreland professes gratitude that his patriotism and loyalty were granted by CBS. But his patriotism and loyalty were never at issue. What was at issue was whether he, and behind him the military enterprise, fudged intelligence estimates for political reasons. The testimony of Gen. McChristian and Col. Hawkins—or at least the bitter disappointment that Gen. Westmoreland expressed in their testimony—pretty much undermined him on this crucial score. Whether the word “conspiracy” was the right one to describe his pattern of conduct seems somewhat beside the point. No less off the point is whether CBS practiced airtight professional journalism. Gen. Westmoreland made a very high-risk judgment in going after CBS and he did not carry the day.

Let us be realistic, however. An individual who feels he has been wronged—even a public figure—cannot always be expected to take great perceived injury lying down. And a legal system that provided

no procedure of recourse for someone who felt himself so harmed would be diminished greatly in the public mind. Gen. Westmoreland sued, and he took a heavy toll. He forced CBS through a disclosure procedure that revealed evidence of sloppiness and unprofessionalism in the production of the documentary. Not only were its news processes dissected, but its energies were distracted and it was put to heavy expense. There may be some gain in the greater care that journalists at CBS and elsewhere will take in future stories, but there may be substantial loss, too, if bold investigative and analytical journalism is chilled. The spectacle of one of the behemoths of the news business being put under duress by a determined adversary—for a story that, however faultily assembled, had an essential truth to it—is not one to comfort the press as a whole or the public, with its interest in full debate.

Such a case is bound to leave many people wondering if there is not a reasonable alternative to the draining process of a libel proceeding. Broadly speaking, we think there are two. Public figures must come to an understanding not so much of their difficulty in winning a libel suit as of the public's interest in robust inquiry. News organizations have to find it in themselves to be fair and professional and, when reasonable questions arise, to provide aggrieved parties a reasonable response or a reasonable way to respond themselves. We would hate to think the country has gone through two painful, difficult libel trials in succession without emerging with some better notion of how freedom and fairness both can be served.